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GENERAL COUNSEL
OF COPYRIGHT

In the Matter of:)	
DIGITAL PERFORMANCE RIGHT)	Doc. Nos. 96-5 CARP DSTR
IN SOUND RECORDINGS AND)	and 2000-9 CARP DTRA 1 & 2
EPHEMERAL RECORDINGS)	

MOTION FOR LEAVE TO SERVE CONFIDENTIAL CARP REPORT

The Recording Industry Association of America, Inc. ("RIAA"), hereby requests leave to serve parties who are entitled to receive Restricted Protected Materials in Doc. No. 2000-9 CARP DTRA 1 & 2 with a copy of the Confidential CARP Report, dated November 12, 1997 ("Confidential Report"), from the subscription services statutory licensing proceeding (Doc. No. 96-5 CARP DSTR).

At the conclusion of the subscription services proceeding, the CARP for that proceeding granted RIAA's request that the Confidential Report be made available to future CARPs. *See* Order of November 24, 1977, at Attachment A. Consistent with the terms of that Order, RIAA has today filed the Confidential Report as part of its direct case in Docket No. 2000-9 CARP DTRA 1 & 2. *See* RIAA Exhibit No. 085 DR. RIAA believes that the Confidential Report also should be served on the other parties to that proceeding, at least those entitled to receive Restricted Materials. However, under the terms of the Protective Order in the subscription services proceeding, RIAA is not permitted to serve them.

RIAA attempted to gain consent to serve the Confidential Report as Restricted Protected Materials in this proceeding from each of the three subscription services that were parties in Docket No. 96-5 CARP DSTR. *See* Attachment B. One of the three

services, Music Choice (who also is a party in Docket No. 2000-9 DTRA 1 & 2) granted consent, as long as service of the Confidential Report is limited to outside counsel and is subject to the strictest terms of the protective order entered in Docket No. 2000-9 DTRA 1 & 2. *See* Attachment C. However, the remaining two (Muzak and DMX) have not responded to RIAA's request. Muzak, which filed an earlier notice to participate in Docket No. 2000-9 but did not file a notice to submit a direct case, has new counsel who was unable to see the Confidential Report in order to consider the request. *See* Attachment D. DMX is a party in Docket No. 2000-9 DTRA 1 & 2 and filed a notice saying that it would submit a direct case.

Protection of confidentiality equivalent to that applicable to the subscription services proceeding is available under the Protective Order that governs Docket No. 2000-9 CARP DTRA 1 & 2. *See* Order of March 29, 2001. RIAA proposes that only those individuals who have access to Restricted Protected Materials in Docket No. 2000-9 CARP DTRA 1 & 2 be given access to the Confidential Report, and that the provisions of the March 29 Protective Order apply to the distribution of the Confidential Report.

Respectfully submitted,

RECORDING INDUSTRY ASSOCIATION
OF AMERICA, INC.

By: *Michael J. Woods*
Robert Alan Garrett
Ronald A. Schechter
Michele J. Woods
Jule L. Sigall
Brad R. Newberg
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, D.C. 20004

April 11, 2001

COPYRIGHT ARBITRATION ROYALTY PANEL

In the Matter of

Determination of Statutory License
Terms and Rates for Certain Digital
Subscription Transmissions of Sound
Recordings

Docket No. 96-5 CARP DSIRA

ORDER

Under consideration are the Memorandum of the Recording Industry Association of America concerning designation of a Public Version of the Panel's Report, filed on November 19, 1997, and the response of the Services filed on November 24, 1997.

The Copyright Act requires Copyright Arbitration Royalty Panels to act on the basis of, inter alia, "prior arbitration panel determinations." 17 U.S.C. 802 (c). This being so, that portion of RIAA's request that this Panel's Confidential (Non-Public) Report be made available to future Copyright Arbitration Royalty Panels IS GRANTED.

In all other respects, RIAA's requests ARE DENIED.

Lenore G. Ehrig
The Honorable Lenore G. Ehrig
Chairperson

Thomas A. Fortkort
The Honorable Thomas A. Fortkort

DATED: November 24, 1997

ARNOLD & PORTER

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NEW YORK
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VIA FAX & MAIL

March 13, 2001

Bruce D. Sokler, Esq.
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Counsel for DMX

Jon L. Praed, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004
Counsel for Muzak

Dear Colleagues:

At the conclusion of the subscription service statutory license proceeding (Docket No. 96-5 CARP DSTR) the Copyright Arbitration Royalty Panel (CARP) granted RIAA's request that the Panel's Confidential (Non-Public) Report be made available to future CARPs. *See* Order of November 24, 1997 (copy attached). Consistent with the terms of that Order, we intend to submit the Confidential Report to the CARP in the upcoming webcaster arbitration (Docket No. 2000-9 CARP DTRA 1&2).

I am writing to request your consent to our serving the Confidential Report on all parties in the webcaster arbitration. We will request that the Confidential Report be

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March 13, 2001

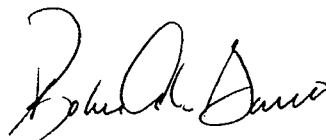
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treated with the highest level of protection under the protective order that is adopted by the Copyright Office, and that only the CARP in the webcaster proceeding, the Copyright Office, and outside counsel to parties in the webcaster proceeding have access to it.

We wish to make the Confidential Report available to the parties when we exchange direct cases on April 2, 2001. Accordingly, we would appreciate your response to this request by March 20, 2001.

Please feel free to call me if you would like to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Alan Garrett", written in a cursive style.

Robert Alan Garrett

Attachment

FROM : Lenore G. Ehrig
0202 707 8366PHONE NO. : 202 667 9560
U S COPYRIGHT OFFICENov. 24 1997 05:36PM P2
1.724133 1.724133 1.002/002

COPYRIGHT ARBITRATION ROYALTY PANEL

In the Matter of

Determination of Statutory License
Terms and Rates for Certain Digital
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Docket No. 96-5 CARP DSIRA

ORDER

Under consideration are the Memorandum of the Recording Industry Association of America concerning designation of a Public Version of the Panel's Report, filed on November 19, 1997, and the response of the Services filed on November 24, 1997.

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In all other respects, RIAA's requests ARE DENIED.

Lenore G. Ehrig
The Honorable Lenore G. Ehrig
Chairperson

Thomas A. Fortknot
The Honorable Thomas A. Fortknot

DATED: November 24, 1997

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Fernando R. Laguarda
Direct dial 202 434 7347
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202 434 7300
202 434 7400 fax

April 4, 2001

BY FACSIMILE

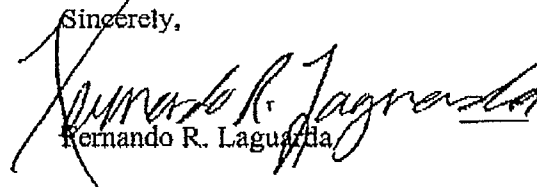
Robert Alan Garrett
Arnold & Porter
555 Twelfth Street, N.W.
Washington, DC 20004-1206

Dear Bob:

In connection with your letter of March 13, 2001, I write inform you that Music Choice consents to your request to serve the Confidential Report from the subscription service statutory license proceeding (Docket No. 96-5 CARP DSTRA) in the upcoming arbitration (Docket No. 2000-9 CARP DTRA 1 & 2); provided that service shall be (1) limited sotely to outside counsel for the parties and (2) subject to the strictest provisions of the protective order entered in that proceeding.

This consent is without waiver of Music Choice's right to object to the use of the report or the information contained therein.

Sincerely,



Fernando R. Laguarda

cc: Seth D. Greenstein, Esq.
Ronald H. Gertz, Esq.
Paula Calhoun, Esq.

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ARNOLD & PORTER

March 27, 2001

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In addition, we have not received your response to our earlier request for consent to include the Confidential Report in our direct case for the webcaster arbitration, subject to the strictest provisions of the protective order that will be entered in that proceeding. We would appreciate it if you would also give us your response promptly since direct cases must be filed on April 11, 2001.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Alan Garrett". The signature is fluid and cursive, with the first name "Robert" and last name "Garrett" clearly distinguishable.

Robert Alan Garrett

cc: Ronald H. Gertz, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to Serve Confidential CARP Report has been filed and served this 11th day of April, 2001, by first class mail and by facsimile, to the following persons:

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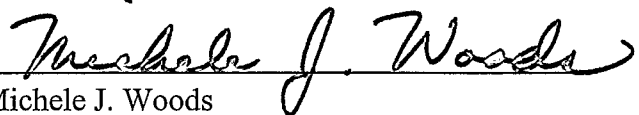
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